

IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

WESLEY WILLIAM OSBORN,

Appellant.

DOCKET NUMBER WD78713

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: October 11, 2016

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Larry D. Harman, Judge

JUDGES

Division Two: Mitchell, P.J., and Martin and Witt, JJ.

CONCURRING.

ATTORNEYS

Chris Koster, Attorney General
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Attorneys for Respondent,

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Attorneys for Appellant.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
Respondent,)
v.) **OPINION FILED:**
) **October 11, 2016**
WESLEY WILLIAM OSBORN,)
)
Appellant.)

WD78713

Clay County

Before Division Two Judges: Karen King Mitchell, Presiding Judge, and Cynthia L. Martin and Gary D. Witt, Judges

Wesley Osborn appeals, following a bench trial, his convictions of unlawful possession of an explosive weapon, § 571.020, and failure to appear, § 544.665, for which he was sentenced to consecutive terms of six years and three years, for a total sentence of nine years' imprisonment. Osborn brings six points on appeal, collectively challenging: (1) the trial court's refusal to accept his guilty plea to failure to appear; (2) the sufficiency of the evidence supporting both convictions; and (3) the trial court's determination that Osborn was competent to stand trial.

AFFIRMED.

Division Two holds:

1. A defendant is competent when he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him.
2. In Missouri a defendant is presumed competent, and has the burden of proving incompetence by a preponderance of the evidence.
3. Absent some suggestion of mental instability, there is no duty to initiate an investigation of the accused's mental condition.

4. The need for an investigation is not indicated where the accused has the present ability to consult rationally with counsel and to understand the proceedings.
5. The suspicion or actual presence of some degree of mental illness or need for psychiatric treatment does not equate with incompetency to stand trial.
6. Here, there is nothing in the record indicating that the trial court had reason to question Osborn's competence.
7. A criminal defendant does not have an absolute right under the Constitution to have his guilty plea accepted by the court.
8. The trial court has virtually unlimited discretion prior to acceptance of the plea to refuse any plea of guilty outright or to reject any plea bargain between the State and the defendant. For this reason, it is well settled that a trial court may exercise its sound discretion to reject a guilty plea.
9. The court at a guilty plea proceeding *should* reject the plea if the record facts do not establish the commission of a crime.
10. At the hearing, Osborn denied purposely failing to appear, claiming instead that he inadvertently overslept. Thus, it appeared that a factual basis was lacking for the charged crime. Under those circumstances, a court may (and, according to several cases, should) reject the plea.
11. Actual possession means having the object on his or her person *or* within easy reach and convenient control. Constructive possession occurs when a person has the power and the intention at a given time to exercise dominion or control over the object either directly or through another person or persons. Possession may also be sole or joint. Possession is a voluntary act if the possessor knowingly receives the thing possessed, or having acquired control of it was aware of his control for a sufficient time to have enabled him to dispose of it or terminate his control.
12. To prove constructive possession, the State had to show, at a minimum, that the defendant had access to and control over the area where the contraband was found.
13. In possession cases, when there is joint control over premises, evidence of additional incriminating circumstances that imply knowledge may be required.
14. Here, Osborn knew that the substance was in the house, as evidenced by his various statements to law enforcement indicating that he had handled the substance on multiple occasions, that he knew where in the house it was located, and that he knew it was in the house to begin with.
15. Here, the evidence also firmly established that Osborn knew the substance was explosive. First, when Guterri first brought the substance into the house, Osborn believed it to be "C-4," a commonly known explosive material. Second, when he and Guterri got into a dispute, he threatened to turn the substance over to the police; Osborn admitted that

Guterri's response to this threat caused him to believe the substance was explosive. Third, during his interview, Osborn told the detective that Guterri told him it was explosive when she first brought it home and even indicated that it could be remotely detonated by a cell phone. Fourth, Osborn told the Operation 100 negotiator that there was an explosive in the house. And finally, Osborn told the investigating detective that he did not want anyone to get hurt and there were explosives in a teddy bear in the house. All of this evidence supports the court's determination that Osborn knew the substance was explosive.

16. There is no set formula as to what evidence is required to properly infer an intent to manufacture. The requisite showing of intent, however, is generally not susceptible to proof by direct evidence. Instead, the necessary intent may be based upon circumstantial evidence or inferred from surrounding facts such as the defendant's conduct before the act, from the act itself, and from the defendant's subsequent conduct.
17. Here, the evidence showed that Guterri brought the explosive substance into Osborn's home in response to Osborn's extreme anxiety and fear after his alleged victimization in a recent shooting attempt. Osborn admitted that he was looking for some form of protection but ruled out obtaining a firearm due to having prior convictions. When Guterri brought the substance into Osborn's home, she advised Osborn that it was something he could use "to kill these guys." The only manner in which the substance could serve the intended purpose of protection is if it were somehow turned into a weapon. Guterri advised Osborn that it needed to be detonated and could be done so remotely using a cell phone. This evidence provided a reasonable inference that Osborn kept the substance with the purpose of turning it into a weapon so that he could use it to protect himself.
18. Nothing in the language of § 571.020.1(2) suggests that the State was required to prove that Osborn knew *how* to manufacture an explosive weapon or that he had other materials necessary to make the substance explode.
19. Under § 544.665, to meet its burden of proof, the State need only establish that the defendant was aware that he was required to appear in court on a certain date and at a certain time and that he failed to do so.
20. If a defendant's failure to appear is involuntary in the sense that he is physically incapable of appearing through unforeseen circumstances (*e.g.*, traumatic injury or disease requiring hospitalization, unexpected interference with travel, etc.), he could certainly put forth a defense that the State could not prove a voluntary act beyond a reasonable doubt. Regarding the culpable mental state, a defendant could put forth a defense if he was somehow unaware of the scheduled date and time of his required appearance (*e.g.*, through insufficient or inaccurate notice).
21. Under the 2009 amendment, if a defendant was physically capable of appearing, a claim that the failure to appear was unintentional or inadvertent is no longer a defense.

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